No. 01-757

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In The

Supreme Court of the United States

SYNGENTA CROP PROTECTION, INC., ROBERT RABB, EDEE TEMPLET, and KENNETH A. DEVUN,

Petitioners,

v.

HURLEY HENSON,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN SUPPORT ON BEHALF OF RESPONDENT

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QUESTION PRESENTED FOR REVIEW

Does the All Writs Act, 28 U.S.C. 1651(a), grant federal district courts the original jurisdiction required under 28 U.S.C. 1441 to permit removal of cases that would otherwise be ineligible for removal?

BRIEF IN SUPPORT ON BEHALF OF RESPONDENT

Respondent, Hurley Henson, respectfully submits this brief in support of the Petition in the above-captioned case. There is a manifest division in authority on whether federal district courts may employ the All Writs Act, 18 U.S.C. § 1651(a), as a basis for removal jurisdiction, in the absence of any other grounds for original jurisdiction. The split in the circuits is well-documented and notorious, and the underlying issue is of great importance to the operation of the federal courts. Respondent is prepared to fully defend the decision of the Eleventh Circuit, in alignment with three other Circuits, that such a use of the All Writs Act is manifestly improper.

COUNTER STATEMENT OF THE CASE

Petitioners provide an accurate account of the prior proceedings in this case, at least as relevant to the All Writs Act ruling of the Eleventh Circuit. Respondent would, however, dispute Petitioners' characterization of the events giving rise to the district court's award of sanctions against Attorney Hany Zohdy in this case. Despite the district court's ruling that Zohdy attempted to "thwart" the settlement agreement reached earlier in federal court by initiating an unrelated state proceeding, see Pet. App. 16a, it is by no means clear that that was, in fact, either his intention or purpose. Indeed, given that class counsel made no efforts to dismiss the *Henson* action and that Petitioners sought removal of the proceeding only four years after the ostensible settlement, is highly suggestive that neither side initially regarded the *Henson* proceeding as being wholly

barred by the settlement.

More significantly, it is doubtful that the district court, as affirmed by the Eleventh Circuit, had the jurisdiction to sanction Zohdy in this proceeding for violating an earlier settlement. This is especially so since Zohdy was not class counsel in the earlier proceeding and was not charged in the settlement stipulation with the duty of effectuating the agreement. See Pet. App. 5a-6a. Respondent intends to seek review, by way of a conditional Cross-Petition, of this aspect of the Eleventh Circuit's ruling. But, otherwise, Respondent concurs that the All Writs Act issue decided by the Eleventh Circuit merits this Court's plenary review.

REASONS FOR GRANTING THE PETITION

1. Respondent takes the exceptional step of supporting this Petition because it is manifest that there is a clear schism in circuit authority on the use of the All Writs Act, 28 U.S.C. § 1651(a), as a means to grant the federal courts removal jurisdiction where it otherwise would not exist. The specific context of this case is, of course, the propriety of district courts asserting jurisdiction in state-filed proceedings, in order to enforce settlement agreements previously entered into by federal courts. This appears to be the most common scenario in which federal courts are attempting to boot-strap their removal jurisdiction, but it is by no means the only one. See Joan Steinman, *The Newest Frontier of Judicial Activism: Removal Under the All Writs Act*, 80 B.U. L. REV. 773, 794-812 (2000); Lonny Sheinkopf Hoffman, *Removal Jurisdiction and the All Writs Act*, 148 U. PA. L. REV. 401, 408-32 (1999) (both collecting cases).

As the Eleventh Circuit acknowledged in the decision below, see Pet. App. 8a-10a, there is a cavernous split in the circuits on this question. Even after eliminating certain cases where the rulings are doubtful or are dicta,[1] that leaves a clear division in precedent, with four Circuits ruling that the All Writs Act provides the original jurisdiction needed for removal,[2] and three Circuits rejecting such a theory.[3] Indeed, since the Second Circuit initiated this "unconventional use" of the All Writs Act, see Hoffman, supra, at 415, with *Yonkers Racing Corp. v. City of Yonkers*, 858 F.2d 855 (2d Cir. 1988); this divergence in practice among the federal courts of appeals has been widening, not closing.

2. Respondent certainly concurs with Petitioners that the

[1] In this category would be included a decision from the **Third** Circuit (*Davis v. Glanton*, 107 F.3d 1044, 1047 (3d Cir. 1997), cert. denied, 522 U.S. 859 (1997) (holding that use of the All Writs Act in providing removal jurisdiction was permissible, although circumstances of the case did not justify it)); and the **Fifth** Circuit (*Texas v. Real Parties in Interest*, 259 F.3d 387, 395 (5th Cir. 2001) (same holding)).

[2] **Second** (*In re Agent Orange Prod. Liab. Litig.*, 996 F.2d 1425, 1431 (2d Cir. 1993)); **Sixth** (*Bylinski v. City of Allen Park*, 169 F.3d 1001, 1003 (6th Cir 1999)); *Sable v. Gen. Motors Corp.*, 90 F.3d 171, 175 (6th Cir. 1996)); **Seventh** (*In re VMS Secs. Litig.*, 103 F.3d 1317, 1324 (7th Cir. 1996)); **Eighth** (*Xiong v. State of Minnesota*, 195 F.3d 424, 426 (8th Cir. 1999)).

[3] **Ninth** (*Westinghouse Elec. Corp. v. Newman & Holtzinger, P.C.*, 992 F.2d 932, 937 (9th Cir. 1993)); **Tenth** (*Hillman v. Webley*, 115 F.3d 1461, 1469 (10th Cir. 1997)); **Eleventh** (the underlying case in this Petition). It should be noted that an earlier decision of the **Seventh** Circuit, *In re County Collector*, 96 F.3d 890, 902-03 (7th Cir. 1996), appears to reject this use of the All Writs Act, although its vitality is questionable after the *In re VMS Secs. Litig.* decision.

issue raised here is important, within the meaning of this Court's considerations for the grant of certiorari in S.Ct. R. 10(a). See Pet. 14-15. Respondent would, however, submit that the Eleventh Circuit's decision — and those of the other courts of appeals that have rejected the extended application of the All Writs Act to inappropriately broaden removal jurisdiction — properly reflects this Court's jurisprudence and strikes the right balance between respecting the integrity of federal judgments, while, at the same time, preserving state-court jurisdiction from unauthorized removals.

This Court has consistently reiterated that removal under 28 U.S.C. § 1441 is only possible where a case "originally could have been filed in federal court." *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Moreover, the All Writs Act's grant of authority "necessary or appropriate in aid [of federal court] jurisdiction[]," 28 U.S.C. § 1651(a), has never been regarded as an independent basis for federal subject-matter jurisdiction. The All Writs Act thus cannot, by itself, supply original jurisdiction where it does not otherwise exist. See *Clinton v. Goldsmith*, 526 U.S. 529, 534-35 (1999); *Pennsylvania Bureau of Corr. v. United States Marshals Serv.*, 474 U.S. 34, 40 (1985).

These conclusions are all consistent with the history and purpose of the All Writs Act. No recourse to plumbing metaphors of the Act as "jurisdictional caulk . . . plug[ging] the cracks in federal jurisdiction," Pet. App. 11a (citing *United States v. New York Tel. Co.*, 434 U.S. 159, 172-73 (1977), for this "broad view" of the Act), will sanction what is otherwise an impermissibly wide expansion of federal jurisdiction at the expense of state courts. As the Eleventh Circuit observed, Pet. App. 11a, such a "re-equilibrating [of the] federal-state balance" is Congress's to make. Respondent looks forward to joining issue on these questions should the Court, in its wise exercise of jurisdiction, grant review here.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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